

James H. Billingsley
HUGHES & LUCE, L.L.P.
1717 Main Street
2800 Bank One Center
Dallas, Texas 75201
(214) 939-5500
ATTORNEYS FOR HIGHLANDER
TOWNGATE, LTD.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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	:
	: Chapter 11
In re	:
	: Case Nos. 00-41065
RANDALL'S ISLAND FAMILY	: Through 00-41196 (SMB)
GOLF CENTERS, INC., <u>et al.</u>,	: (Jointly Administered)
	:
Debtors.	:
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**AMENDED CONDITIONAL OBJECTION TO PROPOSED ASSUMPTION AND
ASSIGNMENT OF LEASE AND OBJECTION TO STATED CURE AMOUNT**

Highlander Towngate, Ltd., through its co-counsel, Hughes & Luce, LLP and Blank Rome Tenzer Greenblatt LLP, files this amended conditional objection to the Debtor's Motion for Orders Pursuant to Sections 105, 363, 365 and 1146 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 6007 (I) (A) Authorizing and Approving (I) Sale of Certain Fee-Owned Properties, (ii) Assumption, Sale and Assignment of Certain Leasehold Interests, and (iii) Sale of Related Personal Property, Free and Clear of Liens, Claims, Encumbrances, and Interests and Exempt From Any Stamp, Transfer, Recording or Similar Tax, (B) Approving Certain Sale Procedures to Be Used in Connection With Such Sales, (C) Approving the Form of Sale and Assignment Agreements, (D) Authorizing the Payment of Brokers; Fees in Connection With Such Sales, (II) In the Event That Properties Remain Unsold at the Conclusion of the Omnibus Sale Hearing, Authorizing and Approving the Abandonment of Unsold Fee-Owned Properties and the Rejection of Unsold Leasehold Interests, and (III) Scheduling an Expedited Hearing to

Consider Shortening the Time for, Fixing the Date, Time and Place for, and Approving the Form and Manner of Notice of the Hearing on Such Sales (the “Motion”). In addition, Highlander Towngate, Ltd. objects the cure amount stated by the Debtor in a letter to Highlander Towngate, Ltd. dated October 19, 2000.

I. BACKGROUND

1. On September 13, 1996, Highlander Towngate, Ltd. (“Highlander”) entered into a lease (the “Lease”) with Golden Bear Golf Centers, Inc. covering both real and personal property located at 22255 Eucalyptus Avenue, Moreno Valley, California (the “Premises”).¹

2. GBGC Family Golf Centers, Inc. (“Debtor”) is the successor-in-interest to Golden Bear Golf Centers, Inc. and the tenant under the Lease.

3. The Lease obligates the Debtor to pay monthly rental, as well as property taxes and other taxes assessed against the Premises and property located on the Premises.

4. The Lease grants the Debtor the right to use and occupy the non-residential real property and improvements on the Premises for a term of ten years. The Lease also grants the Debtor the right to use and possess the “Personal Property,” which is defined in section 1 of the Lease as

all fixtures, furniture, furnishings, fittings, equipment, machinery, apparatus, signage, appliances, draperies, carpeting and other articles of personal property owned by Landlord now located on the Premises and used or useable in connection with any part of the Premises or the Improvements . . .

The Lease further defines Personal Property as including, but not limited to “practice golf balls, rental golf clubs and related equipment . . . and any such personal property which may hereafter

¹ A copy of the Lease is being attached as Exhibit 1 to the copies of this objection filed with the Court, served on Debtor’s counsel, and provided to Chambers. Other parties may obtain a copy of the Lease by contacting Highlander’s counsel.

be acquired by Tenant and used, installed or placed on the Premises by Tenant pursuant to the terms of this Lease.”

5. The Lease provides, in section 8, that “[u]pon the expiration of the Term hereof, or upon any earlier termination of the Term hereof or of Tenant’s right to possession, Tenant shall surrender the Premises, the Improvements and the Personal Property in at least as good condition as at the date hereof” Section 8 further provides that “Tenant acknowledges that it has no right to remove any Improvements or Personal Property upon the expiration of the Term hereof, or upon any earlier termination of the Term hereof.”

6. Sections 1 and 8 of the Lease unambiguously provide that all personal property existing at the time the Lease was executed is Highlander’s property, and that all personal property subsequently acquired by the tenant become Highlander’s property upon the termination of the Lease, either at the end of its stated term or sooner.

7. Section 11 of the Lease makes the Lease, and the Debtor’s obligations thereunder, subject to the terms of the Ground Lease (defined in the Lease as the “Prime Lease”) between RIR Associates and Highlander.² Section 12.1 of the Prime Lease obligates Highlander and (by extension under Section 11 of the Lease) the Debtor to maintain the Premises “in first-class order, condition and repair. . . .” Section 12.3 of the Prime Lease prohibits Highlander and (by extension under Section 11 of the Lease) the Debtor, from making alterations to the Premises without obtaining prior approval.

8. On July 19, 2000, the Court held a hearing on the Motion and authorized the Debtor to sell certain assets to Klak Golf, L.L.C. (“Klak Golf”). Highlander filed a conditional

² Copies of the relevant portions of the Prime Lease are being attached as Exhibit 2 to the copies of this objection filed with the Court, served on Debtor’s counsel, and provided to Chambers. Other parties may obtain a copy of the Prime Lease by contacting Highlander’s counsel.

objection to the Motion on or about July 28, 2000, stating that it did not object to the assumption and assignment of the Lease provided that the personal property located at the Premises remained there.

9. On October 19, 2000, the Debtor sent a letter to Highlander and its counsel stating its intention to assume and assign the Lease to Klak Golf and setting out an alleged cure amount. The cure amount claimed by the Debtor is \$999.45, consisting of prorated rent and property taxes for May 2000. Following receipt of the Debtor's letter, Highlander began investigating the actual extent of the defaults under the Lease and the amount necessary to cure those defaults.

II. CONDITIONAL OBJECTION TO THE MOTION AND OBJECTION TO THE CURE AMOUNT STATED BY THE DEBTOR

10. Highlander is not opposed *per se* to the Debtors' assumption and assignment of the Lease to Klak Golf. But the Lease may only be assumed and assigned to Klak Golf if the requirements of 11 U.S.C. §365(f)(2) are satisfied. This includes curing all defaults under the Lease. 11 U.S.C. §§365(f)(2)(A); 365(b)(1)(A). If the Debtor cures the defaults described in the following paragraphs, Highlander has no objection to the assumption and assignment of the Lease to Klak Golf.

11. There are numerous defaults under the Lease. First, certain items of personal property owned by Highlander were removed from the Premises by employees of the Debtor, in violation of Sections 1 and 8 of the Lease. A list of the items that were taken from the Premises is attached as Exhibit 3. To cure this default, these items must either be returned to the Premises or the Debtor must compensate Highlander by paying the replacement value for the property that was removed. Highlander estimates that the aggregate replacement value for such property is \$71,150.00.

12. Second, there are numerous maintenance defaults under the Lease. Section 11 of the Lease obligates the Debtor to perform certain obligations under the Prime Lease, including the obligations set out in Section 12.1 of the Prime Lease to maintain the Premises in first-class condition. The Debtor has failed to maintain the Premises in the condition required under the Lease and the Prime Lease, and has made alterations to the Premises in violation of the Lease and Prime Lease. A list of maintenance defaults is attached as Exhibit 4. To cure these defaults, the Debtor must either correct these maintenance items or compensate Highlander by paying the cost to correct these maintenance items. Highlander estimates that the cost to cure these maintenance defaults is \$427,000.00.

13. Third, the Debtor failed to pay certain rentals and other amounts when due according to the terms of the Lease. An itemization of these amounts is attached as Exhibit 5. To cure these defaults, the Debtor must pay Highlander \$17,344.59 representing unpaid rentals, taxes, and other amounts due under the Lease.³

Dated: Dallas, Texas
November 1, 2000

HUGHES & LUCE, L.L.P.
Co-Counsel to Highlander Towngate, Ltd.

By: /s/James H. Billingsley
James H. Billingsley
Texas State Bar No. 00787084

1717 Main Street
2800 Bank One Center
Dallas, Texas 75201
(212) 885-5500

³ Riverside County, California, the local taxing authority, also assessed \$5,931.95 in personal property taxes. Upon information and belief, the Debtor paid these taxes in full. If not, the Debtor will also have to pay an unpaid portion of this tax liability before the Lease can be assumed and assigned.

-and-

BLANK ROME TENZER GREENBLATT, LLP
Co-Counsel to Highlander Towngate, Ltd.
405 Lexington Avenue
New York,, NY 10174
(212) 885-5000

**ATTORNEYS FOR HIGHLANDER
TOWNGATE, LTD.**

CERTIFICATE OF SERVICE

I certify that a copy of this pleading was served upon Debtor's counsel, Gary Kaplan, Fried, Frank, Harris, Shriver & Jacobsen, by overnight delivery, and on all other parties by regular mail, postage prepaid in accordance with the Federal Rules of Bankruptcy Procedure, on November 1, 2000.

/s/James H. Billingsley
James H. Billingsley